Dear Jim, 7/7/88

Thanks for the Ross Gelbspan story from the Boston Globe on FBI "do not file" files.

The FBI spokeswoman Schnitzer lied to him in saying that the document was marked "do not file" because it contained no information not on file. As I'm sure you remember from my litigation.

Moreover, in the case of information given to the director, unless the record is kept there is no way for anyone to know what the director was told.

If Gelbspan or the various counsel have any further interest, I recall also that the FBI had "dead" files and "new dead" files, in addition to "do not file" files. Further, the SACs kept especially delicate information in their safes. There were probably other such farout secrecy devices I do not recall.

I think I knew of these files before accidental disclosure to a committe and my source was either records I saw or a former SA.

In my field offices case the FBI swore it had no "do not file" files, remember?

If there is any interest in any followup, then there is the Dallas William Walter memo-to-self or file by Shankling reporting that instead of filing the information he had to send it to Adams in HQ. Shanklin was covering his own ass.

You have this and I used it in litigation. If you can't locate a copy, in the event of interest, I can.

Fun on why the director's annotations ought be preserved is the Hoover note asking !" Who is Sartre?"

Above, Shanklin's instructions were by Adams himself, then #3 in the FBI.

Lawyers are quoted as telling Gelbspan that the request for a meeting with Webster does not exist in FBI files. They should have included one word, "disclosed," because sure as hell it does exist. Maybe in a 94 file, maybe unfiled in a tickler, which is less likely, and the decision on whether or not to meet will be recorred on it. Usually with lower-level recommendation(s).

I've also gotten and started to read the Moschella additional disclosure to Mark Allen of late last month. I've begun to read it and will write you about it separately. I've read Emil's letter and the first of the attached memos, etc. There had to be a covering letter or memo for the memo proper because it holds no identification. I suppose it was drafted by Coulsen in Mintz's office. Wasn't that then the General Counsel Division?

The weather is getting to me a bit and I have a medical appointment shortly but I will write you about at least this first documents in that sheaf. It refers to several things I should have gotten and didn t in my litigation and so I won't forget will you please phone Emil and tell him that the tickler copy of the memo that caused all that agitation was sworn not to exist in my field offices cases and would he please send me a copy of it- and any other Dallas and New Orleans info in that tickler, the existence of which Phillips not cannot swear falsely about? They were ordered by the judge to search for and disclose that and Phillips wore they had none and thus did not have to search. As you may recall, I swore under oath that he was lying.

If you think t is will interest Gelbspan or any counsel, would you please send? Thanks.

Best

Harold

Harold Weisberg

Note suggests that FBI keeps secret files

By Ross Gelbspan
Globe Staff

A recently released FBI document has raised suspicions that the bureau created secret files as late as 1985, despite sworn statements by FBI officials that the practice was discontinued before 1980.

During the 1960s and 1970s, the FBI maintained a set of secret records known as "do not file" files that were used to conceal controversial FBI activities, such as political burglaries and wiretaps.

That practice was supposedly stopped in the 1970s following revelations of FBI excesses by congressional investigations.

An FBI records management official said in a deposition in 1980 that the bureau had discontinued the practice of creating "do not file" files, according to New York attorney Marshall Perlin, who successfully prosecuted the FBI in a records-related case.

An FBI spokesman on Friday denied that the FBI maintains "do not file" files.

But a Feb. 15, 1985 FBI document, provided to the Globe by a source who asked not to be identified, is marked by a typewritten "do not file" heading across the top of the document. A handwritten notation reads "Do not destroy w/o my permission." The signature is blacked out.

The 1985 document is a communication from Oliver Revell, the FBI's executive assistant director, to William Webster, former FBI director, citing a request from an aide to Henry Kissinger for a personal meeting with Webster about alleged harassment of Kissinger by the Lyndon LaRouche group.

FBI spokeswoman Sue Schnitzer said that the document was marked "do not file" because it contained no information or policy deliberations that were not already recorded in other FBI files. Schnitzer stressed there is no current FBI category of records with "do not file" designations.

"This document was strictly an informational status report from Revell to Webster, summarizing things in the file. There's nothing in here that isn't in other files, so there's no sense in filing it, since the material is already filed," she added.

But some congressional observers and attorneys for the LaRouche organization said they did not find that explanation persuasive.

Rep. Don Edwards (D-Calif.) said he was angered by the existence of the document.

"Our committee will strongly object to this sort of practice by the FBI," said Edwards, who chairs the House subcommittee on civil and constitutional rights.

"Reinstituting 'do not file' files would emasculate the oversight process. It would take us back to the bad old days when J. Edgar Hoover had a desk full of 'do not file' material which no one knew about until after he died," he added.

Two weeks ago, Edwards called for congressional passage of a new charter to govern FBI investigations. "That charter would require a paper trail on FBI activities. How can you exercise oversight over the bureau if they're hiding things?" he asked.

The source, who asked not to be identified, added that he was "especially surprised that such a file involved people at the level of Webster and Revell."

Several specialists said that two laws passed in the late 1970s, the Freedom of Information and Privacy acts, required government agencies to make known the existence of all records systems.

Jerry Berman, an official of the American Civil Liberties Union in Washington, said that "under the terms of the Freedom of Information Act, the Privacy Act and the FBI's archival systems, any bureau correspondence is supposed to be properly filed." He added that the privacy and freedom of information acts require federal agencies to acknowledge the existence of all files, even if they withhold specific entries in those file systems.

The "do not file" files were used by the FBI, especially during its investigation of black and antiwar activists in the 1960s and 1970s, to conceal activities of questionable legality by FBI agents, according to several sources, all of whom expressed surprise that the FBI was still engaging in the practice.

One person familiar with FBI operations in the 1960s said the old "do not file" files were used to "record black bag jobs which would subsequently be reviewed" by FBI internal monitors to determine whether the burglaries were properly authorized.

That practice was described in a "do not file" file which was uncovered by former Attorney General Edward Levi in 1975 and made public by a congressional committee.

One source familiar with the FBI's investigation of groups opposed to Reagan administration policies in Central America said the bureau used secret files to record activities which may have violated the attorney general's guidelines. That source asked not to be identified.

The recently released 1985 document refers to a request by a Kissinger aide for a meeting that day with about the LaRouche organization.

The document notes that at a press conference the previous day, LaRouche released earlier correspondence between Webster and Kissinger, including a directive from Kissinger to Revell to determine whether the FBI had a basis for investigating the LaRouche group "under the guidelines or otherwise."

The FBI had investigated the LaRouche organization in 1982 and 1983 for its alleged telephone harassment of Kissinger. According to a Justice Department memo, that investigation was closed in August 1983.

Two attorneys for the LaRouche organization said that neither the request for a meeting with Webster nor the LaRouche press conference were recorded in other FBI files.